

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**FATOU YANSANE AS NEXT FRIEND
OF DIOR YANSANE AND MAREME
DIOKHAME AS NEXT FRIEND OF
ARAME MARRE**
Plaintiff,

v.

FIESTA CORP, LLC
Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

DEFENDANT FIESTA MART, L.L.C.’S NOTICE OF REMOVAL

Defendant Fiesta Mart, L.L.C., an entity that Plaintiff improperly identified and misnamed as “Fiesta Corp, LLC,” (“Fiesta”) hereby removes this action from the Harris County Court at Law No. 2, to this Court, pursuant to and in accordance with 28 U.S.C. §§ 1332, 1441, and 1446. As grounds for removal, Fiesta states as follows:

I.
FACTS

1. On June 8, 2020, Plaintiffs Fatou Yansane, as Next Friend of Dior Yansane, and Mareme Diokhane, as Next Friend of Arame Marre (“Plaintiffs”), filed a lawsuit in the Harris County Court at Law No. 2 (Cause No. 1155732) against Fiesta Corp, LLC (“Lawsuit”).¹ Plaintiffs seek to recover damages arising from alleged personal injuries that arose after eating eggs purportedly purchased at Fiesta’s store located at 12584 Westheimer Rd., Houston 77077. In their Original Petition, Plaintiffs’ seek “monetary relief over \$100,000 but not more than \$200,000.”

2. Plaintiffs served Fiesta Mart, L.L.C.’s registered agent with the Lawsuit on January

¹ Exhibit 3: Plaintiff’s Original Petition [hereinafter “Pet.”].

25, 2021.² Importantly, instead of serving Fiesta Corp, LLC (the entity named as Defendant in the Plaintiffs’ Petition) and its registered agent included in the Citation, the process server served Fiesta Mart, LLC’s registered agent at the Fiesta Mart, LLC offices. Based on a review of the contents of the Petition, Fiesta Corp, LLC is a misnomer for Fiesta Mart, LLC.

II.
TIMELINESS OF REMOVAL

3. Generally, a defendant is required to file a notice of removal of a civil action within thirty (30) days after the receipt by the defendant of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based. 28 U.S.C. § 1446(b)(1). Plaintiffs served Fiesta on January 25, 2021. Thus, the filing of this notice of removal is timely.

III.
VENUE

4. Venue for removal is proper in this district pursuant to 28 U.S.C. § 1446(a) because the state court in which this action has been pending is located in this district and division.

IV.
DIVERSITY JURISDICTION

5. A civil action initially filed in a state court is removable if the action is one over which “the district courts of the United States have original jurisdiction” 28 U.S.C. § 1441(a). District courts “have original jurisdiction of all civil actions where the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States” 28 U.S.C. § 1332(a)(1).

6. This action is removable because (1) this action is between citizens of Texas and a citizen of different states (Delaware and California) and (2) the amount in controversy exceeds

² Exhibit 4: Executed Citation.

\$75,000. 28 U.S.C. § 1332(a)(1).

A. This action is between citizens of different states.

7. Diversity exists when the amount in controversy is \$75,000 and the citizenship of each plaintiff is diverse from the citizenship of each defendant. 28 U.S.C. § 1332(a)(1).

1. Plaintiff's Citizenship

8. The Petition alleges that Plaintiffs are residents of Texas.³ Accordingly, Fiesta is informed and believes that Plaintiffs were citizens of the State of Texas at the time they filed and served their Petition and that Plaintiffs continue to be citizens of the State of Texas as of the filing of this Notice of Removal. *See Stine v. Moore*, 213 F.2d 446, 488 (5th Cir. 1954).

2. Defendant Fiesta's Citizenship

9. Fiesta is now, and was at the time the case commenced, diverse in citizenship from Plaintiff.

10. Fiesta Mart, L.L.C. (incorrectly named as “Fiesta Corp, LLC”), the Defendant, is a limited liability company. Therefore, its citizenship is determined by the citizenship of its members. *See, e.g., Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). The sole member of Fiesta Mart, L.L.C. is Bodega Latina Corp., a corporation incorporated under the laws of the State of Delaware with its principal place of business, now and when the case commenced, in California.⁴ The corporate structure of Fiesta has not changed since the time the affidavit included as Exhibit 7 was executed. Because Fiesta takes the citizenship of its sole member, Fiesta is therefore a citizen of Delaware and California and of no other state. *See Harvey*, 542 F.3d at 1080.

³ Exhibit 3: Pet. at p. 1.

⁴ Exhibit 7: Affidavit of Michael Saltzstein.

11. Accordingly, complete diversity exists as the parties are citizens of different states.
28 U.S.C. § 1332(a)(1).

B. The amount in controversy exceeds \$75,000.

12. To show that all the requisites for federal jurisdiction are met, a removing party must demonstrate that the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332(a); *Garcia v. Koch Oil Co. of Texas Inc.*, 351 F.3d 636, 638 (5th Cir. 2003). The amount in controversy is ordinarily established on the face of the complaint and the dollar-amount actually claimed. *See id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)); *Allen v. R & H Oil and Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

13. Here, the Petition states that Plaintiffs seek “monetary relief over \$100,000 but not more than \$200,000.”⁵ Accordingly, the amount in controversy that Plaintiffs seek from Fiesta exceeds \$75,000, and the amount in controversy requirement is satisfied. *See Lopez v. Wal-Mart Stores, Inc.*, No. CV-B-15-174, 2016 WL 1104884, at *3 n.2 (S.D. Tex. Jan. 15, 2016) (citing *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999)) (finding that assertion of “only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees” satisfies the amount in controversy requirement).

V.
NOTICE

14. Pursuant to 28 U.S.C. § 1441(d), and to effect removal, Fiesta, as the removing party, will promptly give all parties notice of the filing of this Notice of Removal. Fiesta has filed or will contemporaneously file with the clerk of the state court a notice of the filing of this Notice of Removal.

⁵ Exhibit 3: Pet., at p. 2.

15.

VI.
EXHIBITS TO NOTICE OF REMOVAL

16. As required by 28 U.S.C. § 1446(a) and Local Civil Rule 81 for the United States District Court for the Southern District of Texas, Fiesta has attached to this Notice of Removal the following numbered exhibits:

- a. Exhibit 1: Index of documents being filed;
- b. Exhibit 2: The docket sheet for Cause No. 1155732: *Fatou Yansane, et al. v. Fiesta Corp, LLC*; in the County Court at Law No. 2 for Harris County, Texas;
- c. Exhibit 3: Plaintiff's Original Petition, filed June 8, 2020;
- d. Exhibit 4: Executed Citation for Fiesta Corp, LLC but served on Fiesta Mart, L.L.C.'s Registered Agent;
- e. Exhibit 5: List of Counsel of Record;
- f. Exhibit 6: Notice of Removal in State Court; and
- g. Exhibit 7: Affidavit of Michael Saltzstein.

CONCLUSION

WHEREFORE, Defendant Fiesta Mart, L.L.C. respectfully removes this action, Cause No. 1155732, from the Harris County Court at Law No. 2, to the United States District Court for the Southern District of Texas.

Respectfully submitted,

By: /s/ Jeryn Roberts
David Toney (Attorney-in-Charge)
State Bar No. 00797561
S.D. Tex. No. 17174
Jeryn Roberts (Of Counsel)
State Bar No. 24091802
S.D. Tex. No. 3498977
ADAMS AND REESE LLP
1221 McKinney, Suite 4400
Houston, Texas 77010
Telephone: (713) 652-5151
Telecopier: (713) 652-5152
David.Toney@arlaw.com
Jeryn.Roberts@arlaw.com

**ATTORNEYS FOR DEFENDANT
FIESTA MART, LLC**

CERTIFICATE OF SERVICE

The undersigned Counsel hereby certifies that the foregoing has been served via ECF and/or email on this 24th day of February 2021, to the following:

Warren Fitzgerald Muhammad
LAW OFFICES OF WARREN FITZGERALD MUHAMMAD
The Beulah Shephard Building
6112 Wheatley
Houston, Texas 77091
Phone: (713) 360-7091
Fax: (713) 510-1504
warren@wfmlawfirm.com
ATTORNEY FOR PLAINTIFFS

/s/ Jeryn Roberts

Jeryn Roberts